

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF
AltEn, LLC,

FID # 84069

Respondent.

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CASE NO. 3546

EMERGENCY COMPLAINT
AND ORDER

This Emergency Complaint and Order is issued by the Director of the Department of Environment and Energy (hereinafter referred to as "Department") pursuant to Neb. Rev. Stat. § 81-1507(4) of the Environmental Protection Act (Act), Neb. Rev. Stat. § 81-1501 et seq. (Reissue 2014, Supp. 2015) which authorizes the director whenever the director finds that an emergency exists to require immediate action to protect public health and the environment. The Department is the agency of the State of Nebraska charged with the duty pursuant to Neb. Rev. Stat. § 81-1504(1) to exercise exclusive general supervision of the administration and enforcement of the Environmental Protection Act, and all rules and regulations and orders promulgated under the Act. The Respondent is AltEn, LLC, (hereinafter "Respondent"), whose Facility is located in Mead, Saunders County, Nebraska.

The complaint below sets out the facts establishing the existence of an emergency, and the order specifies the immediate action that must be taken to abate the emergency. This Emergency Complaint and Order is effective immediately. The Respondent shall be afforded the opportunity for a hearing upon application in writing to the director of the Department, such hearing to take place as soon as possible but not later than ten days after a request is made.

I. COMPLAINT

1. Respondent is AltEn, LLC, owner of the ethanol plant (hereinafter "Facility") at 1344 County Road 10, Mead, Nebraska 68041. The legal description is N SW Section 12

Township N 14 Range E 08, Saunders County, Nebraska. AltEn, LLC, is a limited liability company registered to do business in Nebraska and organized in the state of Kansas.

2. The Respondent's ethanol plant uses seed corn treated with pesticides to produce ethanol. The waste products include wastewater and distiller's grain, both containing high levels of pesticide residue.

3. Respondent's Facility discharges processed wastewater to three lagoons. The Department issued an Emergency Complaint and Order to the Respondent dated February 4, 2021, which among other provisions cited therein, required the Facility to immediately cease discharge of industrial wastewater into its wastewater lagoons and take whatever action is necessary to ensure that the Facility and its equipment are operating in compliance with State law, regulations, and permits. Respondent was further prohibited from removing industrial wastewater from its wastewater lagoons except in accordance with standards and conditions for disposal of industrial wastewater laced with pesticides and only at a location and in a manner approved by the Department.

4. On February 12, 2021, at approximately 8:45 am (CT), the Department was notified of a reported release of waste materials purportedly consisting of thin stillage and manure from a four-million gallon digester tank at the Facility. See Attachment A, hereby incorporated into this Order. The discharge of these waste materials was uncontrolled and unpermitted and flowed onto and off the Facility property into a drainage ditch and onto neighboring property owned by the University of Nebraska approximately 4.5 miles from the digester tank.

5. On February 12, 2021, employees from the Department conducted a site visit and collected samples at the Facility. See Attachment B, hereby incorporated into this Order.

6. On February 17, 2021, the Department issued a Letter of Noncompliance (LNC) to the Facility alleging a violation of Neb. Rev. Stat. § 81-1506(1) and requiring the Facility to immediately:

- A. Take action to prevent further migration of the digester material. Construct and maintain secure barriers to prevent further migration of digester material downstream. The final barrier ("Furthest extent of spill observed" . . .) will be located directly below the farthest downstream migrated material location. Monitor existing and constructed barriers daily for integrity and effectiveness.
- B. Take action to construct and maintain secure barriers to prevent migration of digester material from AltEn, LLC property.
- C. Take action to construct secondary containment for the second digester. Conduct and document hourly inspections of the digester for leaks or potential failure. Take action to correct leaks or potential failure upon discovery.
- D. Take action to prevent the comingling of snow melt with digester material. Clear accumulated snow and new snowfall away from digester material. Locate the snow where melt water will not comingle with released material. Snow contaminated or in contact with released material is considered part of the release; and
- E. By 12:00 p.m. February 18, 2021 provide a written plan describing the recovery and transportation of released digester material. Identify the method and location of disposal for this material. Include the start date of activity and a daily schedule of implementation. See Attachment C, hereby incorporated into this Order.

7. Employees from the Department conducted site visits at the Facility between February 13 and 19, 2021, to monitor the situation, observe activities, and assess compliance with the February 4, 2021, Emergency Complaint and Order Case No.3540, and the Act. See Attachment D, hereby incorporated into this Order. A contractor for the United States Environmental Protection Agency (USEPA) was on site at the Facility on February 13 and 14, 2021, to monitor the situation, observe activities, and take samples.

8. On February 18, 2021, the Respondent submitted a response letter to the Department's LNC outlining the Facility's plan and the Department responded with comments by letter on the same date. See Attachment E, hereby incorporated into this

Order. To date, Respondent's activities to contain and respond to the discharge by pumping have not been effective.

9. The Respondent is a person as defined in Neb. Rev. Stat. § 81-1502(10).

10. Neb. Rev. Stat. § 81-1506(1)(a) makes it "unlawful for any person to cause pollution of any air, waters, or land of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, waters, or land of the state."

11. Neb. Rev. Stat. § 81-1506(2)(d) makes it unlawful for any person to "construct, install, or operate any industrial, commercial, or other facility or extend, modify, or add to any such facility if the operation would cause an increase in the discharge or emission of wastes into the air, waters, or land of the state or would otherwise cause an alteration of the physical, chemical, or biological properties of any air, waters, or land of the state in a manner that is not lawfully authorized."

12. Neb. Rev. Stat. § 81-1502(14) defines "wastes" to mean sewage, industrial waste, and all other liquid, gaseous, solid, radioactive, or other substances which may pollute or tend to pollute any air, land, or waters of the state" and in subsection (26) further defines "solid waste" in part to "mean any garbage, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, and mining operations and from community activities."

13. Neb. Rev. Stat. § 81-1502(20) states "Water pollution shall mean the manmade or man-induced alteration of the chemical, physical, biological, or radiological integrity of water."

14. Neb. Rev. Stat. § 81-1502(21) states "Waters of the state shall mean all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, wetlands, watercourses, waterways, wells, springs, irrigation systems,

drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state.”

15. Neb. Rev. Stat. § 81-1502(19) defines “land pollution” to “mean the presence upon or within the land resources of the state of one or more contaminants or combinations of contaminants, including, but not limited to, refuse, garbage, rubbish, or junk, in such quantities and of such quality as will or are likely to (a) create a nuisance, (b) be harmful, detrimental, or injurious to public health, safety, or welfare, (c) be injurious to plant and animal life and property, or (d) be detrimental to the economic and social development, the scenic beauty, or the enjoyment of the natural attractions of the state.”

16. The Director finds that the Respondent has placed wastes or caused wastes to be placed in a drainage ditch which constitutes a water of the state, and other locations where such wastes are likely to cause pollution of the waters and land of the state, in violation of Neb. Rev. Stat. § 81-1506(1)(a) and Neb. Rev. Stat. § 81-1506(2)(d).

17. The Director finds that Respondent’s failure to immediately contain the unpermitted and uncontrolled release and discharge of wastes described herein is creating an imminent and substantial danger and risk to human health and the environment.

18. The Director finds that Respondent’s actions described herein and failure to adequately contain and respond to the release and discharge of wastes has caused damage to land and waters of the state that has yet to be adequately remediated and is creating a further risk to downstream property owners.

19. The Director finds that the Respondent has failed to operate its Facility to adequately maintain and provide adequate secondary containment for the two digesters at its Facility, which failure caused the February 12, 2021, release and threatens a further release and discharge of digester wastes to migrate off the Facility in a manner that

presents an emergency and imminent and substantial threat to human health and the environment.

20. The Director further finds that the Respondent, by its actions, has caused and will continue to cause pollution to the waters and land of the state in violation of state law.

21. The Director finds that an emergency exists requiring immediate action to protect the public health and welfare and that the Facility must take the following compliance actions to mitigate and remediate the pollution event and prevent injury and exposure to the public and the environment.

II. COMPLIANCE ORDER

IT IS HEREBY ORDERED THAT:

22. Respondent must immediately fortify and secure barriers to the migration of and prevention of any further discharge of wastes, wastewater, and pollutants beyond the containment barrier designated as Barrier 3 by the Respondent in Attachment E, taking into account the influence of melting snow and potential rainwater that may occur.

23. Respondent is prohibited from and must immediately prevent the introduction of any additional water, wastewater, or waste material to drainage ditches and other areas off the Facility for any purpose including flushing wastes.

24. Respondent must take active steps to remove wastes, wastewater, and other discharged materials from drainage ditches and other areas both on and off the Facility by pumping, digging, excavating, vacuuming, or hauling by truck and removal to the Respondent's emergency wastewater lagoon or a location approved by the Department. Off Facility actions must be done only with the consent of the landowner.

25. Respondent must take measures to secure and protect the remaining second digester that still contains thin stillage and manure wastes to prevent a release of materials to the environment, including but not limited to berms and other secondary containment if

materials cannot safely be removed from the digester for disposal at an approved disposal facility.

26. Respondent must report to the Department in writing or by email on a daily basis, not later than 5:00 p.m. (CT), the amount of wastes, wastewater, and other materials removed from the drainage ditch and other areas where the discharge has reached in terms of volume in either gallons or cubic feet.

27. Respondent is prohibited from resuming its commercial and industrial operations until such time as it has been notified the discharged digester wastes have been sufficiently remediated that such operation may resume without further threat of harm to public health and the environment.

28. Respondent must provide access to Department employees, USEPA employees or contractors, and Department contractor, Terracon, for purposes of overseeing work conducted pursuant to the Order.

29. This Compliance Order does not supersede or invalidate the Emergency Complaint and Order, Case No. 3540, previously issued effective February 4, 2021, which remains in full force and effect.

30. Respondent shall promptly respond to any written communication by the Department with reference to this Emergency Complaint and Order. Any delay in responding to such communication shall be construed as non-compliance with this Order.

III. SUBMITTALS

31. Any information or verification required to be submitted to the Department pursuant to this Order shall refer to FID #84069 and shall be sent to:

Brad Pracheil
Division Administrator for Compliance and Inspections
Nebraska Department of Environment and Energy
PO Box 98922
245 Fallbrook Blvd.

Lincoln, NE 68509-8922
402-471-2186

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

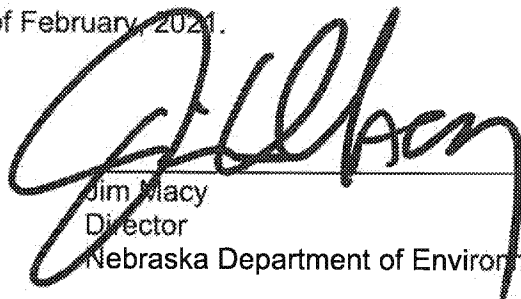
32. In accordance with Neb. Rev. Stat. §18-1507(4) this Emergency Complaint and Order shall become effective immediately. The Respondent is required to comply with the Emergency Order upon receipt.

33. The Respondent may request a hearing by submitting a written request to the Director. The request for hearing may be filed by mail to: Jim Macy, Director, State of Nebraska Department of Environment and Environment, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or may be delivered to the Department's Lincoln office located at 245 Fallbrook Blvd., Lincoln, Nebraska. Such hearing shall be scheduled as soon as possible but not later than ten days after the request is made. The Emergency Complaint and Order shall remain in effect pending any hearing and shall not relieve the Respondent from immediate compliance.

34. This Emergency Complaint and Order does not preclude the Department from pursuing additional remedial action and enforcement by administrative order for injunctive relief and penalties based on violations of the Act.

35. The Department further reserves the right to impose additional obligations to abate or eliminate the emergency or pollution caused by the Respondent.

Dated this 30th day of February, 2021.



Jim Macy
Director
Nebraska Department of Environment and Energy

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Emergency Order and Complaint, Case No. 3546, was served by certified United States mail, postage prepaid, return receipt requested this ____ day of February, 2021, upon the Respondent's Registered Agent listed below at their mailing address:

Capitol Corporate Services, Inc.
1125 S. 103rd St.
Suite 800
Omaha, NE 68124

Lauren Triplett
Staff Assistant, Legal Division

